



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 24 1993.

5581

*John Love*

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:  
SP-14J

C.T. Corporation System  
Registered Agent for:  
The Marion Steel Company  
815 Superior Avenue, N.E.  
Cleveland, Ohio 44114

FTTS to KZ 9/27/93

Re: Complaint and Notice of Opportunity for Hearing for  
Marion Steel Company, Marion, OH

Dear Sir: ISCA-V-C 087 '93

Enclosed please find a Complaint and Notice of Opportunity for Hearing concerning violations of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., discovered by representatives of the United States Environmental Protection Agency at The Marion Steel Company, Marion, Ohio.

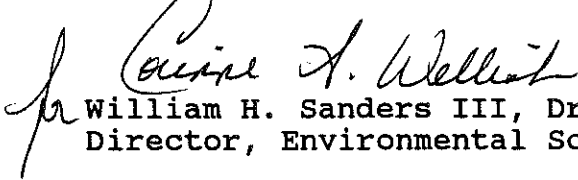
I recommend that you carefully read and analyze the enclosed Complaint and Rules of Practice, 40 C.F.R. Part 22, to determine the alternatives available in responding to the alleged violations, proposed penalties and opportunity for a hearing. Please note that each day the violations cited herein continue constitutes a new violation for which additional penalties may be imposed.

If you choose to request a hearing to contest the facts alleged in the Complaint, you are required to request the hearing in your Answer, which you must file with the Regional Hearing Clerk within the prescribed time limit of twenty (20) days following service of this Complaint. A copy of your Answer and Request for Hearing should be sent to Jeffery M. Trevino, Assistant Regional Counsel, Office of Regional Counsel (CA-3T), Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590. Mr. Trevino's telephone number is (312) 886-6729.

Failure to respond to this Complaint and Notice of Opportunity for Hearing by specific answer within twenty (20) days of your receipt of this Complaint constitutes your admission of the allegations made in the Complaint. Such failure may result in the issuance of a Default Order imposing the proposed penalties.

Whether or not you request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. If you have any questions about this matter or desire to request an informal conference for the purpose of settlement, please write to John Love, PCB Control Section (SP-14J), Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, or you may telephone him at (312) 886-6845.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "William H. Sanders III".

William H. Sanders III, Dr.P.H., P.E.  
Director, Environmental Sciences Division

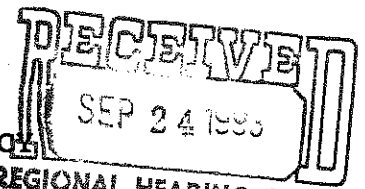
**CERTIFICATE OF SERVICE**

This is to certify that the ORIGINAL and ONE COPY of this Complaint and Notice of Opportunity for Hearing was filed with the Regional Hearing Clerk on September 24, 1993 and that a true and correct copy was mailed with the Consolidated Rules of Practice to Respondent at:

C.T. Corporation System  
Registered Agent for:  
The Marion Steel Company  
815 Superior Avenue, N.E.  
Cleveland, Ohio 44114

Marlene Bronson 9/24/93  
Marlene Bronson  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency  
Chicago, Illinois 60604-3590

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



IN RE:  
  
THE MARION STEEL COMPANY,  
MARION, OHIO,  
  
RESPONDENT.

) DOCKET NO. TSCA-V-C

) TSCA-V-C 087 '93

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

I. GENERAL ALLEGATIONS

1. This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), and Sections 22.01(a)(5) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.01(a)(5), 22.13.

2. The Complainant is, by lawful delegation, the Director, Environmental Sciences Division, Region 5, United States Environmental Protection Agency ("U.S. EPA").

3. The Respondent is The Marion Steel Company, Marion, Ohio, which is and was at all times relevant to this Complaint, an Ohio company operating under the laws of the State of Ohio, with a place of business at 912 Cheney Avenue, Marion, Ohio.

4. On February, 17, 1978, the Polychlorinated Biphenyls ("PCBs") Disposal and Marking regulations were lawfully promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605.

(43 Fed. Reg. 7150). On May 31, 1979, the PCBs Manufacturing, Processing, Distribution in Commerce and Use regulations ("PCB rule") were lawfully promulgated and incorporated the disposal and marking regulations. (44 Fed. Reg. 31514). The PCB rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

5. Respondent is a "person" as defined at 40 C.F.R. § 761.3 and is subject to the prohibitions set forth at 40 C.F.R. Part 761.

6. Respondent is the owner and operator of the facility at 912 Cheney Avenue, Marion, Ohio.

7. Respondent is a "generator of PCB waste" as that term is defined at 40 C.F.R. § 761.3.

8. On November 30, and December 1, 1992, representatives of the U.S. EPA inspected Respondent's facility to determine its compliance with the PCB rule.

9. At the time of the inspection, Respondent had six PCB transformers at its facility.

10. At the time of the inspection, Respondent's six PCB transformers were in use.

11. Respondent's six PCB transformers were nameplated and contained over 900 gallons of PCBs in concentrations greater than 500 parts per million.

12. Respondent's six PCB transformers were PCB articles as defined at 40 C.F.R. § 761.3.

13. Respondent's PCB articles were PCB items as defined at 40 C.F.R. § 761.3.

#### COUNT I

14. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

15. The PCB rule at 40 C.F.R. § 761.180(a) required, inter alia, that, effective July 2, 1978, each owner or operator of a facility using or storing at one time at least 45 kilograms of PCBs contained in PCB container(s), or one or more PCB transformers, or 50 or more PCB large capacitors develop and maintain records on the disposition of PCBs and PCB items. These records form the basis of annual PCB documents, to be prepared for each facility by July 1, covering the previous calendar year. 43 Fed. Reg. 7150 (February 17, 1978) [subsequently amended at 54 Fed. Reg. 52716 (December 21, 1989)]

to include recordkeeping and reporting requirements applicable beginning February 5, 1990].

*copy* 16. At the time of the inspection, Respondent had not developed and maintained complete records and did not have complete annual documents on the disposition of its PCB items for calendar year 1991.

*Deny* 17. Respondent's failure to develop and maintain complete records and complete annual documents constitutes a violation of 40 C.F.R. § 761.180(a), and Section 15 of TSCA, 15 U.S.C. § 2614.

#### COUNT II

18. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

19. The PCB rule at 40 C.F.R. § 761.180(a) required, inter alia, that, effective July 2, 1978, each owner or operator of a facility using or storing at one time at least 45 kilograms of PCBs contained in PCB container(s), or one or more PCB transformers, or 50 or more PCB large capacitors develop and maintain records on the disposition of PCBs and PCB items. These records form the basis of annual PCB documents, to be prepared for each facility by July 1, covering the previous calendar year. 43 Fed. Reg. 7150 (February 17, 1978)

[subsequently amended at 54 Fed. Reg. 52716 (December 21, 1989) to include recordkeeping and reporting requirements applicable beginning February 5, 1990].

20. At the time of the inspection, Respondent had not developed and maintained complete records and did not have complete annual documents on the disposition of its PCB items for calendar year 1990.

21. Respondent's failure to develop and maintain complete records and complete annual documents constitutes a violation of 40 C.F.R. § 761.180(a), and Section 15 of TSCA, 15 U.S.C. § 2614.

### COUNT III

22. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

23. The PCB rule at 40 C.F.R. § 761.180(a) required, inter alia, that, effective July 2, 1978, each owner or operator of a facility using or storing at one time at least 45 kilograms of PCBs contained in PCB container(s), or one or more PCB transformers, or 50 or more PCB large capacitors develop and maintain records on the disposition of PCBs and PCB items. These records form the basis of annual PCB documents, to be prepared for each facility by July 1, covering the previous



calendar year. 43 Fed. Reg. 7150 (February 17, 1978)  
[subsequently amended at 54 Fed. Reg. 52716 (December 21, 1989)  
to include recordkeeping and reporting requirements applicable  
beginning February 5, 1990].

*Deny* 24. At the time of the inspection, Respondent had not  
developed and maintained complete records and did not have  
complete annual documents on the disposition of its PCB items  
for calendar year 1989.

*Deny* 25. Respondent's failure to develop and maintain complete  
records and complete annual documents constitutes a violation  
of 40 C.F.R. § 761.180(a), and Section 15 of TSCA, 15 U.S.C.  
§ 2614.

#### COUNT IV

26. The General Allegations of the Complaint are  
incorporated by reference as though set forth here in full.

27. The PCB rule at 40 C.F.R. § 761.180(a) required,  
inter alia, that, effective July 2, 1978, each owner or  
operator of a facility using or storing at one time at least 45  
kilograms of PCBs contained in PCB container(s), or one or more  
PCB transformers, or 50 or more PCB large capacitors develop  
and maintain records on the disposition of PCBs and PCB items.  
These records form the basis of annual PCB documents, to be

prepared for each facility by July 1, covering the previous calendar year. 43 Fed. Reg. 7150 (February 17, 1978) [subsequently amended at 54 Fed. Reg. 52716 (December 21, 1989) to include recordkeeping and reporting requirements applicable beginning February 5, 1990].

*Deny* 28. At the time of the inspection, Respondent had not developed and maintained complete records and did not have complete annual documents on the disposition of its PCB items for calendar years 1983-1988. *can't include prior to 1988*

*Deny* 29. Respondent's failure to develop and maintain complete records and complete annual documents constitutes a violation of 40 C.F.R. § 761.180(a), and Section 15 of TSCA, 15 U.S.C. § 2614.

#### COUNT V

30. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

31. The PCB rule at 40 C.F.R. § 761.30(a)(1)(viii) prohibits, as of December 1, 1985, the storage of combustible materials within a PCB transformer enclosure, or within 5 meters of the PCB transformer enclosure, or within 5 meters of an unenclosed PCB transformer.

*Deny* 32. At the time of the inspection, Respondent had stored a combustible material, specifically a cardboard box, within five meters of an unenclosed PCB transformer, specifically a G.E. Pyranol transformer, serial number SN H887303.

*Deny* 33. Respondent's storage of combustible materials within five meters of an unenclosed PCB transformer constitutes a violation of 40 C.F.R. § 761.30(a)(1)(viii), and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT VI

34. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

35. The PCB rule at 40 C.F.R. § 761.205(a)(2) requires that all generators, commercial storers, transporters, and disposers of PCB waste who first engage in PCB waste handling activities after February 5, 1990, shall notify EPA of their PCB waste activities by filing EPA Form 7710-53 with EPA prior to engaging in PCB waste handling activities.

36. At the time of the inspection, Respondent had documentation demonstrating that from January 31, 1991, to April 4, 1991, it had stored PCB debris and PCB capacitors for disposal.

37. Respondent's storage of PCB debris and PCB capacitors for disposal constitutes PCB waste handling activities.

*Admitted did not file, but denies rest*

38. Respondent failed to notify EPA of its PCB waste handling activities by filing EPA Form 7710-53 with EPA prior to engaging in PCB waste handling activities.

*Deny* 39. Respondent's failure to notify EPA of its PCB waste handling activities by filing EPA Form 7710-53 with EPA prior to engaging in PCB waste handling activities constitutes a violation of 40 C.F.R. § 761.205(a)(2), and Section 15 of TSCA, 15 U.S.C. § 2614.

## II. PROPOSED CIVIL PENALTY

Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of TSCA. Based upon the facts alleged in Part I of this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's history of prior such violations of TSCA, the degree of culpability, and such other matters as justice may require, Complainant proposes that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

COUNT I

Improper Recordkeeping.....\$ 9,000

15 U.S.C. § 2614

40 C.F.R. § 761.180(a)

COUNT II

Improper Recordkeeping.....\$ 9,000

15 U.S.C. § 2614

40 C.F.R. § 761.180(a)

COUNT III

Improper Recordkeeping.....\$ 9,000

15 U.S.C. § 2614

40 C.F.R. § 761.180(a)

COUNT IV

Improper Recordkeeping.....\$ 9,000

15 U.S.C. § 2614

40 C.F.R. § 761.180(a)

COUNT V

Improper Use.....\$ 1,500

15 U.S.C. § 2614

40 C.F.R. § 761.30(a)(1)(viii)

COUNT VI

Failure to Notify.....\$25,000

15 U.S.C. § 2614

40 C.F.R. § 761.205(a)(2)

TOTAL PENALTY .....\$62,500

Respondent may pay this penalty by certified or cashier's check, payable to "Treasurer, the United States of America," and remit to:

Region 5  
U.S. Environmental Protection Agency  
P.O. Box 70753  
Chicago, Illinois 60673

A copy of the check shall be sent to:

Branch Secretary  
Pesticides and Toxic Substances Branch (SP-14J)  
Environmental Sciences Division  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

A transmittal letter identifying this Complaint shall accompany the remittance and the copy of the check.

Complainant derived the penalties proposed in Part II of this Complaint by applying the factors enumerated above to the particular allegations that constitute the violations charged in this action. The reasoning for each assessment is delineated in the "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act," 45 Fed. Reg. 59770 (September 10, 1980); and the "Polychlorinated Biphenyls (PCB) Penalty Policy," April 9, 1990, Notice of Availability, 72 Fed. Reg. 13955 (April 13, 1990).

### III. OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., you have the right to request a

hearing regarding the proposed Complaint, to contest any material fact contained in this Complaint, and/or to contest the appropriateness of the amount of the proposed penalty. Any hearing that you request will be held and conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

If you wish to avoid being found in default, you must file a written Answer to this Complaint and Notice of Opportunity for Hearing with the Regional Hearing Clerk, (MFA-10J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, within twenty (20) days of service of this Complaint. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer should also state:

1. The circumstances or arguments that you allege constitute the grounds of defense; and
2. The facts that you intend to place at issue; and
3. Whether you request a hearing.

Failure to deny any of the factual allegations in this Compliant constitutes admission of the undenied allegations. A copy of this Answer and any subsequent documents filed in this action should be sent to Jeffery M. Trevino, Assistant Regional Counsel, Office of Regional Counsel (CA-3T), Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590. Mr. Trevino may be telephoned at (312) 886-6729.

If you fail to file a written Answer, with or without a Request for Hearing, within twenty (20) days of your receipt of this Complaint, the Regional Administrator or Presiding Officer may issue a Default Order. Issuance of this Default Order will constitute a binding admission of all facts alleged in the Complaint and a waiver of your right to a hearing under TSCA. The civil penalty proposed in this Complaint shall then become due and payable without further proceedings sixty (60) days after a Final Order of Default is issued pursuant to 40 C.F.R. § 22.17(a). In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in TSCA, 15 U.S.C. § 2615(a)(4), and the Federal Claims Collection Act of 1966, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. U.S. EPA will impose a late payment handling charge of \$15.00 after thirty (30) days, with an additional charge of \$15.00 for each subsequent 30-day period over which



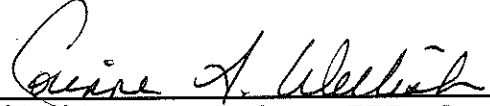
an unpaid balance remains. In addition, U.S. EPA will apply a six (6) percent per annum penalty on any principal amount not paid within ninety (90) days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer.

#### IV. SETTLEMENT CONFERENCE

Whether or not you request a hearing, you may request an informal conference in order to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, write to John Love, PCB Control Section (SP-14J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone him at (312) 886-6845. Your request for an informal settlement conference does not extend the twenty (20) day period during which you must submit a written Answer and Request for Hearing. You may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference shall be embodied in a written Consent Agreement and Final Order issued by the Regional Administrator, Region 5, U.S. EPA. The issuance of such a Consent Agreement shall

constitute a waiver of your right to request a hearing on any stipulated matter in the Agreement.

  
\_\_\_\_\_  
William H. Sanders III, Dr. P.H., P.E.  
Director, Environmental Sciences Division  
Region 5  
U.S. Environmental Protection Agency  
Chicago, Illinois 60604-3590

Dated: September 23, 1993

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- ☐ Addressee's Address
- ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:  
C.T. Corporation System  
Registered Agent for:  
The Marion Steel Company  
815 Superior Avenue, N.E.  
Cleveland, Ohio 44114

4a. Article Number  
P 188 573 627

4b. Service Type  
☐ Registered ☐ Insured  
☒ Certified ☐ COD  
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery  
SEP 27 1993

5. Signature (Addressee)

6. Signature (Agent)  
C.T. CORPORATION SYSTEM  
815 SUPERIOR AVENUE, N.E.  
CLEVELAND, OHIO 44114

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1991 ☆U.S. GPO: 1992-323-402 DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.

P 188 573 627

 **Receipt for Certified Mail**  
No Insurance Coverage Provided  
Do not use for International Mail  
(See Reverse)

**TO:** Corporation System  
Registered Agent for:  
The Marion Steel Company  
815 Superior Avenue, N.E.  
Cleveland, Ohio 44114

**Postage** \$1.67  
**Certified Fee** 1.00  
**Special Delivery Fee** SEP 27 1993  
**Restricted Delivery Fee**  
**Return Receipt Showing to Whom & Date Delivered** 1.00  
**Return Receipt Showing to Whom, Date, and Addressee's Address**  
**TOTAL Postage & Fees** \$3.67  
**Postmark or Date** SEP 24 1993

PS Form 3800, June 1991

J. LOVE (SP-145)

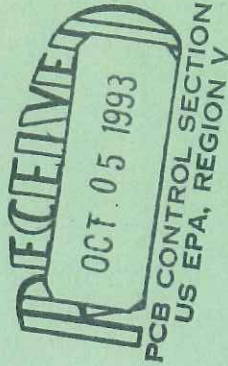
PCB CONTROL SECTION

CHICAGO, ILL. SEP 24 1993 USPS

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE  
USE TO AVOID PAYMENT  
OF POSTAGE, \$300



Print your name, address and ZIP Code here

John Love (SP-14J)

U.S. EPA

77 W. JACKSON BLVD.

CHICAGO, IL 60604-3590

PS Form 3800, June 1991 (Reverse)

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,  
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front).**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge).
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

\* U.S. GPO: 1991-302-916